

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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TROY ROBERT LASECKI,

Petitioner,

v.

Case No. 18-C-506

SHERIFF DOUG VERHEYAN,

Respondent.

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**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
HABEAS PETITION**

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Petitioner Troy Lasecki, who is proceeding without the assistance of counsel, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on March 30, 2018. This matter was randomly assigned to Magistrate Judge William E. Duffin. On April 6, 2018, Magistrate Judge Duffin issued a Report and Recommendation screening the habeas petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases and recommending that the habeas petition be dismissed for failure to exhaust state remedies, which Lasecki admitted because he thought federal court would provide a more rapid response.<sup>1</sup> Magistrate Judge Duffin also recommended that no certificate of appealability be issued. Lasecki was given two weeks to object to the recommendation. The time to respond has lapsed and no objection has been received. Because no objection was made, I review Magistrate Judge Duffin's report for clear error. *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). Upon review, I find no clear error in either the report or the recommendation;

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<sup>1</sup> Because not all parties have filed a consent to magistrate judge jurisdiction, Magistrate Judge Duffin could not dismiss the petition. *See Coleman v. Labor & Indus. Review Comm'n*, 860 F.3d 461 (7th Cir. 2017).

however, I will modify Magistrate Judge Duffin's recommendation of dismissal to be dismissal without prejudice for failure to exhaust state court remedies.

Upon entering an order denying habeas relief, I must issue or deny a certificate of appealability. *See* Rule 11 of the Rules Governing Section 2254 Cases. A district court will issue a certificate of appealability for a habeas petition decided on procedural grounds, such as failure to exhaust state remedies, "when the prisoner shows, at least, that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). No reasonable jurist would find it debatable that Lasecki did not exhaust his state remedies. As such, I will adopt Magistrate Judge Duffin's recommendation to deny a certificate of appealability.

**IT IS THEREFORE ORDERED** that the court **MODIFIES** and **ADOPTS** Magistrate Judge Duffin's Report and Recommendation (ECF No. 5) and Petitioner's habeas petition will be **DISMISSED WITHOUT PREJUDICE**.

**IT IS ALSO ORDERED** that a certificate of appealability is **DENIED**.

The Clerk will enter judgment accordingly.

Dated this 11th day of May, 2018.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court